IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1823 OF 2004

IN

SUIT NO.1765 OF 2004

Mitsui & Co. (Canada) Ltd. .... Plaintiff.

vs.

Boiler Tube Co.Pvt.Ltd & Anr. ... Defendant.

Mr.D.D.Madan i/b. Rajani Associates, for plaintiff.

Mr.Engineer i/b. Anil D'Souza, for Defendant no.1.

Mr.Prakash Shinde i/b. M/s.M.Dhruva & Co. for Defendant no.2.

CORAM: D.K.DESHMUKH,J.

DATED: 28th April,2005

P.C.:-

1. This is a Notice of Motion taken out by plaintiff, seeking certain interim reliefs. The plaintiff has filed the suit for recovery of amount of 6,65,489.98 US dollars, with interest. According to the plaintiff, this amount is payable by the defendants to the plaintiff under the contract between plaintiff

and defendants. The learned Counsel for plaintiff invited my attention to the letter dated 28.5.2004 at Exhibit L to the plaint wherein the defendant no.1 admits that amount of US $ 6,49,892.56 is payable by the defendant no.1 to the plaintiff as and when that amount is received by defendant no.1 from defendant no.2 ONGC. According to defendant no.1, the amount is not paid by defendant no.1 to plaintiff because the sister concern of defendant no.1 has to receive a huge amount from the parent company of the plaintiff. In the reply filed by defendant no.1, the position that the amount is payable by defendant no.1 to the plaintiff is not disputed. However, it is stated that the plaintiff cannot recover the amount from defendant no.1 because huge amount is recoverable from the parent company of the plaintiff by the sister concern of defendant no.1. In this notice of motion, ad-interim orders have been made, as a result of which defendant no.2 ONGC has deposited amount of Rs.2,94,27,135.12 being equivalent of US $ 6,49,892.56, which was the amount payable by defendant no.2 to defendant no.1, and which defendant no.1 was in his turn to pay to the plaintiff. That amount lies in deposit in this Court. From the material available on record, there does not appear to be any dispute that this amount is admittedly payable by defendant no.1 to the plaintiff. But defendant no.1 is not willing to pay this amount to the plaintiff because according to defendant no.1 huge amount is recoverable by the sister concern of defendant no.1 from the parent company of plaintiff. This can not be the reason for denying payment of the amount to the plaintiff. It is to be noted that neither the parent company of the plaintiff which is a separate entity nor the sister

concern of the defendant is party to the suit.

2. Taking overall view of the matter therefore, really speaking in view of the provisions contained in Order 12 Rule 6 of Civil Procedure Code, and in view of the clear admission contained in the letter of defendant no.1, I could have passed a decree in favour of the plaintiff for the amount which is mentioned in the above referred letter of defendant no.1. However, considering the facts and circumstances of the matter, in my opinion, following order would meet the ends of justice:-

(i) In case, the sister concern of defendant no.1 institutes appropriate proceedings in appropriate Court of Law and secure suitable orders within a period of twelve weeks from today, disposal of the amount which is deposited in this Court pursuant to ad-interim order passed in this Notice of Motion shall be governed by those orders.

(ii) In case, no such orders are secured by sister concern of defendant no.1 and produced by defendant no.1 before the Prothonotary and Senior Master of this Court within the aforesaid period, the Prothonotary and Senior Master of this Court shall permit plaintiff to withdraw the amount deposited by defendant no.2 together with the accrual, if any. The withdrawal of the amount shall be subject to the final order that may be passed in the suit.

Notice of Motion disposed of.